

Senator J. Stuart Adams proposes the following substitute bill:

**RETENTION OF OUTSIDE COUNSEL, EXPERT
WITNESSES, AND LITIGATION SUPPORT SERVICES**

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies a provision relating to the attorney general's procurement of litigation related services.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to attorney general rules on the procurement of outside counsel and other litigation services;
- ▶ requires the attorney general to submit proposed rules to a legislative interim committee;
- ▶ requires review of the proposed rules by a legislative interim committee; and
- ▶ modifies the required contents of proposed rules.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 67-5-32, as enacted by Laws of Utah 2012, Fourth Special Session, Chapter 2

27

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **67-5-32** is amended to read:

30 **67-5-32. Rulemaking authority regarding the procurement of outside counsel,**
 31 **expert witnesses, and other litigation support services.**

32 (1) (a) The attorney [~~general's office~~] general shall, [~~on or before August 1, 2012~~] in
 33 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to
 34 establish public disclosure, transparency, accountability, reasonable fees and limits on fees, and
 35 reporting in relation to the procurement of outside counsel, expert witnesses, and other
 36 litigation support services.

37 (b) On or before May 30, 2014, the attorney general shall submit to the ~~H~~→ [H] **Business and**
 38 **Labor** [H] [~~Judiciary~~] ←~~H~~ Interim Committee, for its review, comment, and recommendations, the
 38a attorney
 39 general's proposed rules under Subsection (1)(a) relating to fee limits for outside counsel,
 40 including any provisions relating to exceptions to or a waiver of the fee limits.

41 (c) Before September 1, 2014, the ~~H~~→ [H] **Business and Labor** [H] [~~Judiciary~~] ←~~H~~ Interim
 41a Committee shall include
 42 the attorney general's proposed rules described in Subsection (1)(b) on a committee agenda for
 43 the purpose of allowing the committee to review, comment, and make recommendations on the
 44 proposed rules.

45 (2) The rules described in Subsection (1) shall:

46 (a) ensure that a procurement for outside counsel is supported by a determination by
 47 the attorney general that the procurement is in the best interests of the state, in light of available
 48 resources of the attorney general's office;

49 (b) provide for the fair and equitable treatment of all potential providers of outside
 50 counsel, expert witnesses, and other litigation support services;

51 (c) ensure a competitive process, to the greatest extent possible, for the procurement of
 52 outside counsel, expert witnesses, and other litigation support services;

53 (d) ensure that fees for outside counsel, whether based on an hourly rate, contingency
 54 fee, or other arrangement, are reasonable and consistent with industry standards;

55 (e) ensure that contingency fee arrangements do not encourage high risk litigation that
 56 is not in the best interests of the citizens of the state;

57 ~~[(d)]~~ (f) provide for oversight and control, by the attorney general's office, in relation to
58 outside counsel [~~hired under a contingency~~], regardless of the type of fee arrangement under
59 which outside counsel is hired;

60 (g) prohibit outside counsel from adding a party to a lawsuit or causing a new party to
61 be served with process without the express written authorization of the attorney general's
62 office;

63 ~~[(e)]~~ (h) establish for transparency regarding the procurement of outside counsel,
64 expert witnesses, and other litigation support services, subject to:

- 65 (i) Title 63G, Chapter 2, Government Records Access and Management Act; and
66 (ii) other applicable provisions of law and the Utah Rules of Professional Conduct;

67 ~~[(f)]~~ (i) establish standard contractual terms for the procurement of outside counsel,
68 expert witnesses, and other litigation support services; and

69 ~~[(g)]~~ (j) provide for the retention of records relating to the procurement of outside
70 counsel, expert witnesses, and other litigation support services.